

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LISA RYAN FITZGERALD and  
ROBERT FITZGERALD, as next  
friends of their minor child,  
JACQUELINE FITZGERALD,

Plaintiffs,

v.

BARNSTABLE SCHOOL COMMITTEE,

Defendant.

C.A. No. 02-10604-REK

ANSWER

The Defendant, Barnstable School Committee<sup>1/</sup> ("School Committee"), hereby answers the correspondingly titled sections and numbered paragraphs of the Complaint as follows:

1. The allegations of paragraph 1 are introductory and/or state conclusions of law to which no response is required. To the extent that a response is required, the School Committee denies the allegations of paragraph 1.

Parties

2. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 and leaves the Plaintiffs to their

<sup>1/</sup>Although the Plaintiffs originally also named former Superintendent of Barnstable Public Schools Dr. Russell Dever as a Defendant, the Court, by its September 9, 2004 ruling from the bench, dismissed Dr. Dever from this suit.

proof in this regard.

3. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and leaves the Plaintiffs to their proof in this regard.

4. The School Committee admits the allegations of paragraph 4.

5. The School Committee admits the allegations of paragraph 5.

6. The School Committee denies the allegations of the second sentence of paragraph 6. The School Committee admits the remaining allegations of paragraph 6, but only to the extent that they are true as of the time of the incidents alleged in the Complaint.

#### Jurisdiction

7. The allegations of paragraph 7 state conclusions of law to which no response is required.

8. The allegations of paragraph 8 state conclusions of law to which no response is required.

#### Exhaustion of Administrative Remedies, State Law Claim

9. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 regarding the date when the Plaintiffs wrote the letter referred to therein and leaves the Plaintiffs to

their proof in this regard. With regard to the remaining allegations of paragraph 9, the letter referenced therein is a document that speaks for itself and is its own best evidence of its content and import. As such, the Defendants deny the remaining allegations of paragraph 9.

10. The School Committee admits the allegations of paragraph 10.

11. The School Committee admits the allegations of paragraph 11.

12. The School Committee denies the allegations of paragraph 12. Further answering, the letter referenced therein is a document that speak for itself and is its own best evidence of its content and import.

Statement of Facts

13. The School Committee admits the allegations of paragraph 13.

14. The School Committee denies the allegations of paragraph 14.

15. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 and leaves the Plaintiffs to their proof in this regard.

16. The School Committee denies the allegations of paragraph 16.

17. The School Committee denies the allegations of paragraph 17.

18. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 and leaves the Plaintiffs to their proof in this regard.

19. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 and leaves the Plaintiffs to their proof in this regard.

20. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 and leaves the Plaintiffs to their proof in this regard.

21. The School Committee denies the allegations of paragraph 21.

22. The School Committee admits the allegations of the first sentence of paragraph 22. The School Committee denies the remaining allegations of paragraph 22.

23. The School Committee denies the allegations of paragraph 23.

24. The School Committee denies the allegations of paragraph 24.

25. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 and leaves the Plaintiffs to their proof in this regard.

26. The School Committee denies the allegations of paragraph 26.

27. The School Committee denies the allegations of paragraph 27.

28. The School Committee denies the allegations of paragraph 28.

29. The School Committee denies the allegations of paragraph 29.

30. The School Committee is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 and leaves the Plaintiffs to their proof in this regard.

31. The School Committee denies the allegations of paragraph 31.

32. With regard to the allegations of paragraph 32, the letter referenced therein is a document that speaks for itself and is its own best evidence of its content and import. As such, the Defendants deny the allegations of paragraph 32.

33. The School Committee denies the allegations of paragraph 33.

34. With regard to the allegations of paragraph 34, the letter referenced therein is a document that speaks for itself and is its own best evidence of its content and import. As such, the Defendants deny the allegations of paragraph 34.

35. The School Committee admits the allegations of the first sentence of paragraph 35. The School Committee denies the remaining allegations of paragraph 35.

36. With regard to the allegations of paragraph 36, the letter referenced therein is a document that speaks for itself and is its own best evidence of its content and import. As such, the Defendants deny the allegations of paragraph 36.

37. With regard to the allegations of paragraph 37, the letter referenced therein is a document that speaks for itself and is its own best evidence of its content and import. As such, the Defendants deny the allegations of paragraph 37.

38. With regard to the allegations of paragraph 38, the letter referenced therein is a document that speaks for itself and is its own best evidence of its content and import. As such, the Defendants deny the allegations of paragraph 38.

39. The School Committee denies the allegations of paragraph 39.

40. The School Committee denies the allegations of paragraph 40.

41. The School Committee denies the allegations of paragraph 41.

42. The School Committee denies the allegations of paragraph 42.

43. The School Committee denies the allegations of paragraph 43.

44. The School Committee denies the allegations of paragraph 44.

45. The School Committee denies the allegations of paragraph 45.

46. The School Committee denies the allegations of paragraph 46.

47. The School Committee denies the allegations of paragraph 47.

48. The School Committee denies the allegations of paragraph 48.

49. The School Committee denies the allegations of paragraph 49.

50. The School Committee denies the allegations of paragraph 50.

#### CLAIMS

COUNT ONE: VIOLATION OF TITLE IX  
DEFENDANT: BARNSTABLE SCHOOL COMMITTEE

51. The School Committee incorporates and adopts as a

response to paragraph 51 its responses to the preceding paragraphs realleged herein.

52. The School Committee admits the allegations of paragraph 52.

53. The allegations of paragraph 53 of the Complaint state conclusions of law to which no response is required.

54. The School Committee denies the allegations of paragraph 54.

55. The School Committee denies the allegations of paragraph 55.

56. The School Committee denies the allegations of paragraph 56.

57. The School Committee denies the allegations of paragraph 57.

58. The School Committee denies the allegations of paragraph 58.

59. The School Committee denies the allegations of paragraph 59.

60. The School Committee denies the allegations of paragraph 60.

COUNT TWO: VIOLATION OF CIVIL RIGHTS  
DEFENDANT: BARNSTABLE SCHOOL COMMITTEE; DEVER

61-65. Pursuant to the Court's September 9, 2004 ruling from the bench on Defendants' Motion to Dismiss, this claim has

been dismissed from this action, and, therefore, the School Committee need not respond to paragraphs 61-65. To the extent that a response is required, the School Committee incorporates and adopts as a response to paragraph 61 its responses to the preceding paragraphs realleged therein and denies the allegations of paragraphs 62-65.

COUNT THREE: VIOLATION OF M.G.L. c. 76, § 5  
DEFENDANT: BARNSTABLE SCHOOL COMMITTEE

66-69. Pursuant to the Court's September 9, 2004 ruling from the bench on Defendants' Motion to Dismiss, this claim has been dismissed from this action, and, therefore, the School Committee need not respond to paragraphs 66-69. To the extent a response is required, the School Committee incorporates and adopts as a response to paragraph 66 its responses to the preceding paragraphs realleged therein and denies the allegations of paragraphs 67-69.

Further answering, unless expressly admitted, the School Committee denies each and every allegation contained in paragraphs 1 through 69 of the Complaint.

The School Committee denies that the Plaintiffs are entitled to any of the relief sought in the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Plaintiffs have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs are estopped by their own conduct from asserting the claims contained in the Complaint.

THIRD AFFIRMATIVE DEFENSE

The doctrine of laches prevents the Plaintiffs from asserting the claims contained in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiffs have waived their right to assert the claims contained in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs have failed to satisfy the applicable administrative prerequisites to their claim.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs have failed to satisfy the applicable statute of limitations to their claim.

SEVENTH AFFIRMATIVE DEFENSE

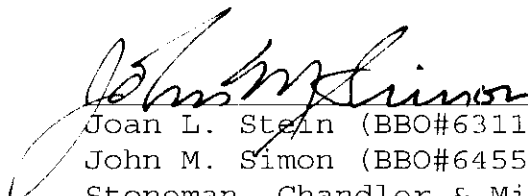
If the Plaintiffs have suffered any damages as a result of the School Committee's conduct, which the School Committee vehemently denies, the Plaintiffs have failed to mitigate their damages.

WHEREFORE, the School Committee requests that this Court dismiss the Complaint in its entirety and that it be awarded its costs and attorneys' fees.

Respectfully Submitted,

BARNSTABLE SCHOOL COMMITTEE

By their attorneys,

  
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Dated: October 7, 2004

Certificate of Service

I hereby certify that a true copy of the  
above document was served upon the  
attorney of record for each other party  
by mail ~~(by hand)~~ on 10/7/04.

